

HENRY A. WAXMAN, CALIFORNIA,  
CHAIRMAN

TOM LANTOS, CALIFORNIA  
EDOLPHUS TOWNS, NEW YORK  
PAUL E. KANJORSKI, PENNSYLVANIA  
CAROLYN B. MALONEY, NEW YORK  
ELIJAH E. CUMMINGS, MARYLAND  
DENNIS J. KUCINICH, OHIO  
DANNY K. DAVIS, ILLINOIS  
JOHN F. TIERNEY, MASSACHUSETTS  
WM. LACY CLAY, MISSOURI  
DIANE E. WATSON, CALIFORNIA  
STEPHEN F. LYNCH, MASSACHUSETTS  
BRIAN HIGGINS, NEW YORK  
JOHN A. YARMUTH, KENTUCKY  
BRUCE L. BRALEY, IOWA  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
BETTY McCOLLUM, MINNESOTA  
JIM COOPER, TENNESSEE  
CHRIS VAN HOLLEN, MARYLAND  
PAUL W. HODES, NEW HAMPSHIRE  
CHRISTOPHER S. MURPHY, CONNECTICUT  
JOHN P. SARBANES, MARYLAND  
PETER WELCH, VERMONT

ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
FACSIMILE (202) 225-4784  
MINORITY (202) 225-5074

[www.oversight.house.gov](http://www.oversight.house.gov)

TOM DAVIS, VIRGINIA,  
RANKING MINORITY MEMBER

DAN BURTON, INDIANA  
CHRISTOPHER SHAYS, CONNECTICUT  
JOHN M. McHUGH, NEW YORK  
JOHN L. MICA, FLORIDA  
MARK E. SOUDER, INDIANA  
TODD RUSSELL PLATTS, PENNSYLVANIA  
CHRIS CANNON, UTAH  
JOHN J. DUNCAN, JR., TENNESSEE  
MICHAEL R. TURNER, OHIO  
DARRELL E. ISSA, CALIFORNIA  
KENNY MARCHANT, TEXAS  
LYNN A. WESTMORELAND, GEORGIA  
PATRICK T. McHENRY, NORTH CAROLINA  
VIRGINIA FOXX, NORTH CAROLINA  
BRIAN P. BILBRAY, CALIFORNIA  
BILL SALI, IDAHO  
JIM JORDAN, OHIO

June 27, 2008

The Honorable Mary E. Peters  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Madam Secretary:

I am writing to express my concerns with the National Highway Traffic Safety Administration's (NHTSA) rulemaking regarding the roof crush resistance for motor vehicles.

It is essential for NHTSA to significantly strengthen the current roof crush standard and require adequate testing of vehicle roof strength to substantially reduce the significant loss of life that occurs each year from the crushing of vehicle roofs during rollover crashes. Both NHTSA's proposed rule issued on August 23, 2005,<sup>1</sup> and the supplemental proposed rule (SNPRM) issued on January 30, 2008,<sup>2</sup> are inadequate and fail to meet NHTSA's mission to "save lives" and "prevent injuries."<sup>3</sup>

You are required under section 10301(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to issue a final roof crush rule by July 1, 2008.<sup>4</sup> However, SAFETEA-LU allows for you to set a new deadline if you determine

---

<sup>1</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; Roof Crush Resistance*, 70 Fed. Reg. 49223 (Aug. 23, 2005) (proposed rule).

<sup>2</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; Roof Crush Resistance*, 73 Fed. Reg. 5484 (Jan. 30, 2008) (supplemental proposed rule).

<sup>3</sup> National Highway Traffic Safety Administration, *NHTSA's Core Values and Commitment to Serving Customers* (available online at [www.nhtsa.gov/portal/site/nhtsa/menuitem.30351f8e7e40c1cbf62a63101891ef9a/](http://www.nhtsa.gov/portal/site/nhtsa/menuitem.30351f8e7e40c1cbf62a63101891ef9a/)) (accessed June 25, 2008).

<sup>4</sup> Pub. L. No. 109-59 (2005).

that the deadline for a final rule cannot be met and if you notify the House and Senate committees of jurisdiction. While it is important that you issue a rule in a timely manner, I urge you to take the time necessary to issue a strong and protective rule.

According to NHTSA's own data, more than 10,000 people are killed and more than 24,000 seriously injured in the over 270,000 rollover crashes that occur each year.<sup>5</sup> Roof crush is a significant contributing factor either by causing direct injury or by causing other vehicle safety features such as seatbelt restraints and other safety components to fail. Injuries resulting from roof crush are usually among the most severe, often involving head trauma or spinal cord damage that results in permanent disability. There is a clear need for NHTSA to strengthen the current roof crush standard which has not been updated since it took effect in 1973.

In 2005, Congress mandated in SAFETEA-LU that NHTSA issue final rules by specific dates for a series of rollover standards, including roof crush resistance. The legislation requires NHTSA to "establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for driver and passenger sides."<sup>6</sup> Congress directed NHTSA to issue a proposed rule by December 31, 2005, and a final rule by July 1, 2008.

NHTSA's proposed rule is inconsistent with the intent of SAFETEA-LU for several reasons. First, it does not provide a meaningful upgrade of the existing standard. Under NHTSA's proposed rule, vehicle roof structures would be required to demonstrate a strength to weight ratio of 2.5, or the ability to withstand a force equivalent to 2.5 times the unloaded vehicle weight. While this is an increase over the 1.5 strength to weight ratio required under the current standard, the proposal is embarrassingly weak. NHTSA has estimated that the change would only save between 13 to 44 lives each year,<sup>7</sup> and that nearly 70% of the current vehicles manufactured in the United States already meet or exceed the proposed 2.5 standard.<sup>8</sup>

Second, NHTSA's proposed rule ignores the mandate in SAFETEA-LU that NHTSA upgrade roof strength for both driver and passenger sides by continuing to require that tests only be conducted on one side of a vehicle. Both sides of a vehicle's roof must be adequately tested to ensure that both drivers and passengers will be protected in a rollover. In the supplemental proposed rule, the agency solicited comments on testing one side of the roof with a strength to weight resistance higher than 2.5 versus testing both sides of the roof at the 2.5 strength to weight ratio. However, the agency provided no concrete analysis or testing data to demonstrate how the single and dual-side testing could be compared as alternatives. The final rule should

---

<sup>5</sup> NHTSA proposed rule, *supra* note 1, at 49224.

<sup>6</sup> Pub. L. No. 109-59 (2005).

<sup>7</sup> NHTSA proposed rule, *supra* note 1, at 49225.

<sup>8</sup> *Id.* at 49243.

include a definitive two-sided test with a clear methodology and analysis of the enhanced benefits.

Third, NHTSA is proposing to weaken testing requirements by abandoning the current requirement that a vehicle roof not crush more than 5 inches when the test is conducted. The proposed rule would institute a less protective standard that would base the success of the test on whether the roof touches the head of a seated Hybrid III crash dummy that is the size of a 50th percentile male. The Hybrid III dummy is approximately 5 feet 9 inches tall and has a seated height of 34.8 inches.<sup>9</sup> NHTSA has provided no analysis of what the safety consequences might be for taller men and women and whether more injuries might result from the change.

Fourth, NHTSA's proposal did not specify a minimum amount of space that must remain between the dummy's head and the roof after the test is completed. This is troubling considering that NHTSA's own analysis of crash data concluded that having residual space over an occupant's head following a rollover reduced the likelihood of suffering a roof contact injury to the head, neck, and face.<sup>10</sup> NHTSA should reexamine its decision to use only a 50th percentile male test dummy and should require a minimum amount of residual space above the dummy's head. The agency should also consider combining the head contact standard with a limit for maximum roof intrusion. It would be shortsighted to impose a new standard which fails to incorporate this key element of the existing test standard.

Fifth, NHTSA's proposed rule continues to rely on the static roof crush test in place since 1973 rather than a dynamic test that would be more useful for evaluating the risk of injuries and the performance of a vehicle's roof in an actual crash. Congress provided in SAFETEA-LU that the Secretary of Transportation "may consider industry and independent dynamic tests that realistically duplicate the actual forces transmitted during a rollover crash."<sup>11</sup> NHTSA's analysis failed to demonstrate that serious review and consideration of currently available dynamic tests ever took place. For example, NHTSA noted the introduction of the Jordan Rollover System (JRS) dynamic test device but provided no reason why further review was not conducted to determine if JRS device would be an appropriate test. NHTSA should conduct its own tests using the JRS test device and investigate the utility of using the device in a dynamic test procedure as part of a revised standard.

In addition to proposing a weak standard, NHTSA included language in the preamble to the proposed rule asserting that the rule would preempt rollover crash victims from holding automakers accountable. Specifically, NHTSA stated that the rule would preempt "all differing

---

<sup>9</sup> National Highway Traffic Safety Administration, *Hybrid III 50th Percentile Male* (online at [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)) (accessed June 25, 2008).

<sup>10</sup> NHTSA proposed rule, *supra* note 1, at 49237.

<sup>11</sup> Pub. L. No. 109-59 (2005).

The Honorable Mary E. Peters  
June 27, 2008  
Page 4

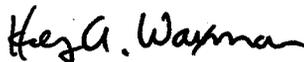
state statutes and regulations” as well as “all conflicting State common law requirements, including rules of tort law.”<sup>12</sup> NHTSA provided no clear statutory authority for its position on the preemption of state common law and did not engage in consultation with state and local governments before including the language in the proposed rule.

There is no indication that Congress intended NHTSA to preempt state common law in promulgating a new roof crush resistance standard. Congress made no mention of preemption in directing NHTSA to issue a final roof crush rule in SAFETEA-LU. The only statutory authority cited by NHTSA in its discussion of preemption in the preamble to the roof crush resistance rule is section 3103(b) of 49 U.S.C. That statute expressly provides for federal preemption of differing state motor vehicle standards. However, the same statute explicitly preserves state common law.<sup>13</sup>

At the same time NHTSA took the position that the proposed rule would preempt differing state statutory, regulatory, and common law, the agency found that that the proposed rule did not have sufficient federalism implications to warrant consultation with state and local government officials or to warrant the preparation of a federalism summary impact statement as required by Executive Order 13132. NHTSA should include in the record any documents related to the agency’s analysis of the rule pursuant to Executive Order 13132.

It has been 35 years since the current roof crush standard took effect. I urge you to issue a rule that is stronger and more protective than the proposed rulemaking. Please include this letter and your response in the record for this rulemaking. Thank you for your immediate attention to this issue.

Sincerely,



Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member

---

<sup>12</sup> NHTSA proposed rule, *supra* note 1, at 49245 - 46.

<sup>13</sup> Section 30103(e) of 49 U.S.C. states that “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.”